



FPPC Bulletin

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Understanding California's Conflict-Of-Interest Rules

— See article on Page 6 for a detailed examination of the "Public Generally" exception in the eight-step process.



FPPC
Toll-free Advice Line:
1-866-ASK-FPPC
(1-866-275-3772)

FPPC Web Site Gets New Look; Goals Include Quicker Updates

By Hal Dasinger
Political Reform Consultant

Launched in April, the Fair Political Practices Commission's new Internet site offers users an updated gateway to the agency's records and services.

The new site, at www.fppc.ca.gov, features continuous updates on coming events, current projects, and recent announcements, as well as a series of links intended to organize Commission materials in logical, easy-to-use categories.

The "Commission" sec-

tion links visitors to meeting agendas, profiles of commissioners, job postings, and other information about the agency. Candidates, lobbyists, and government officials can access forms, filing schedules, frequently-asked questions, and fact sheets from specially designated areas of the site. The "Enforcement" category includes instructions on how to report violations of the Political Reform Act and a summary of past enforcement actions. Press releases are available

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New, Streamlined FPPC Program Promotes Compliance With Late-Contribution Rules

A streamlined program aimed at promoting compliance with California's late-contribution disclosure rules has resulted in numerous FPPC enforcement actions paired with active outreach and education.

FPPC Commissioners were presented with a staff memorandum and report on the streamlined late-contribution program at their March meeting in Sacramento.

The fast-track program, as of the March 9 meeting at FPPC headquarters, had resulted in 42 fines totaling \$86,537, for 96 violations involving more than \$2.2 million in unreported late contributions during the March 2000 primary.

"As a result of the streamlined prosecution program begun by the Commission last June, we were able to investigate

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Reminder: Commission Has New Mailing Address and Public Counter

Those mailing documents to the FPPC or visiting its downtown Sacramento headquarters should be reminded of a small but important address change.

With goals of improving both service to the public and agency efficiency, the Fair Political Practices Commission has reorganized part of its office space.

Most important to the public, the FPPC has moved its public reception area from the fourth floor of 428 J Street to Suite 620 on the sixth floor. The building directory in the lobby now reflects this change.

Also, the Commission's full mailing address has changed from including the old Suite 450 to:

**Fair Political Practices Commission
P.O. Box 807
428 J Street, Suite 620
Sacramento, CA 95812-0807**

Future Commission Meeting Dates

The Fair Political Practices Commission is currently scheduled to meet on the following dates the remainder of this year:

Monday, May 7	Monday, September 10
Friday, June 8	Friday, October 12
Monday, July 9	Monday, November 5
Friday, August 3	Friday, December 7

Meetings generally begin at 9:30 a.m. on Fridays and 10 a.m. on Mondays in the 8th floor hearing room at 428 J Street, Sacramento, unless otherwise noticed.

California Fair Political Practices Commission

Karen Getman, Chairman
Sheridan Downey III, Commissioner
Thomas S. Knox, Commissioner
Gordana Swanson, Commissioner

(As of the date the Bulletin went to publication, the State Controller had not yet named her appointee for the 2001-2005 term).

Commission Meetings

Meetings are generally scheduled monthly in the Commission Hearing Room, 428 J Street, 8th Floor, Sacramento. Please contact the Commission to confirm meeting dates.

Pursuant to Section 11125 of the Bagley-Keene Open Meeting Act, the FPPC is required to give notice of its meetings ten (10) days in advance of the meeting. In order to allow time for inclusion in the meeting agenda and reproduction, all Stipulation, Decision and Order materials must be received by the FPPC no later than three (3) business days prior to the ten day notice date.

To receive a copy of the Commission meeting agenda (free) or a copy of the full meeting packets (\$10/month or \$100/year) contact the Commission at (916) 322-5660. The agenda and packet are also available through the Commission's Fax-on-Demand service at 1-888-622-1151. Additionally, past and future agendas are posted on the website at www.fppc.ca.gov.

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bulletin@fppc.ca.gov

New Web Site Offers Feedback Link

FAIR POLITICAL PRACTICES COMMISSION

SEARCH SITE MAP COMMISSION PRESS CENTER LIBRARY & PUBLICATIONS FEEDBACK FORMS

Welcome to the FPPC Web Site

The Mission of the FAIR POLITICAL PRACTICES COMMISSION is to promote the integrity of representative state and local government in California through fair, impartial interpretation and enforcement of political campaign, lobbying, and conflict of interest laws.

FPPC's Toll-Free Number:
1-866-ASK-FPPC
(1-866-275-3772)

What's New at FPPC?

In re Pelham Postponed Until May
Consideration of the *In re Pelham* opinion, O-00-274, has been postponed until the May 7, 2001 meeting of the FPPC.

Interested Persons Meetings
The FPPC has scheduled Proposition 34 interested persons meetings for April 5, 2001. For more information, [click here](#).

Court Cases
For an update on litigation involving the FPPC, [click here](#).

2001 Commission Meeting Schedule Announced
The next meeting of the FPPC will take place April 6, 2001. See the [Schedule of Upcoming Meetings page](#) for more information about future meetings.

Audit Selections
The FPPC conducted random drawings to identify legislative districts, judicial offices, lobbying entities, and local jurisdictions for audit by the Franchise Tax Board's Political Reform Unit. Lists of those selected may be found [here](#).

Prop. 34
For highlights of Proposition 34, [click here](#). For a chart showing Prop. 34's changes to campaign finance laws, [click here](#).

Left Sidebar Menu:

- FPPC Home Page
- Commission
- Candidates and Committees
- Lobbyists
- Restrictions on Government Officials and Employees
- Ethics Orientation for State Officials
- Conflicts of Interest/Form 700 Statement of Economic Interests
- Enforcement
- Press Center
- Library and Publications
- Forms
- Links

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in the "Press Center," including archived releases dating back to January 2000. The "Library" contains links to FPPC newsletters, fact sheets, regulations, Proposition 34 information, and the updated Political Reform Act. Links throughout the site offer visitors information on how to contact the FPPC by telephone, fax, mail, and e-mail.

The automated feedback function has proven popular with users, who have contacted the agency with questions about the web site, suggestions for improvement, and compliments (mostly) on the new look. "The response has been tremendous," noted Jason Painter, the information systems analyst responsible for day-to-day operation of the web site. "E-mails have been pouring in from the feedback tool. People seem to like the new site."

Accessibility is a major goal of the web project. The agency used software from the Center for Applied Special Technology (CAST) to identify and eliminate design barriers to access by persons with disabilities. Given the diversity of the Internet community and the wide variety of equipment used to access the Internet, however, we recognize that some barriers may persist. Anyone experiencing difficulty using the site should feel free to contact the FPPC so that we may begin working to resolve the problem. On the FPPC site, visitors can click on "Feedback" at the top of the screen to send comments us-

ing the automated e-mail function. As always, comments and suggestions are welcome toll-free at 1-866-ASK-FPPC.

The upgrade of the Web site was funded through the budget of the FPPC's new Public Education Unit. Staff from all FPPC divisions contributed to the project.

Two Named To Internet Panel

A former Fair Political Practices Commission member and a nationally recognized legal expert on technology and public policy issues were named to the Bipartisan Commission on Internet Political Practices by FPPC Chairman Karen Getman.

Deirdre Mulligan, named in January as director of the Samuelson Law, Technology and Public Policy Clinic at the University of California, Berkeley, Boalt Hall School of Law, and veteran journalist and former FPPC Commissioner William Deaver, will serve on the new state Internet commission. The 13-member panel was created by the state Legislature to recommend changes in the Political Reform Act of 1974 as a result of the rapidly expanding role of the Internet in politics.

"Deirdre Mulligan is uniquely qualified to help the advisory commission navigate these uncharted waters, applying the concepts of traditional campaign finance law to communications now occurring through new technologies," Getman said in announcing the two appointments. "We are honored that she is willing to take time out of her busy schedule at U.C.-Berkeley to help us chart this course."

"Bill Deaver brings to the new commission a strong knowledge of the Political Reform Act and of California politics," Getman said of Deaver's appointment. "But more important, he brings the invaluable qualities of pragmatism and balance that are crucial to the work the Bipartisan Commission is asked to do."

"We look forward to hearing from the advisory commission its recommendations on how to uphold the goals of the Political Reform Act without unduly impeding the robust political debate made possible by the Internet," she added.

Mulligan is a graduate of Georgetown University Law Center and Smith College. She came to the Boalt Hall technology and law clinic from Washington D.C., where she was staff counsel for the Center for Democracy and Technology, a non-



Bob Stern, the FPPC's first general counsel and now president of the Center for Governmental Studies in Los Angeles, led a brown-bag discussion this Spring for FPPC staff on the history of the FPPC and the Political Reform Act. The first offices of the FPPC, following its creation by voters in 1974, "were under a garage near the Capitol, with cars rattling overhead," Stern recalled.

profit public policy organization that promotes free expression, privacy and open access on the Internet.

Deaver recently completed a four-year term as an FPPC Commissioner, appointed to the five-member panel by California Secretary of State Bill Jones. A longtime journalist and former federal government official, he lives in Kern County, where he is the editor of the Southeast Kern Weekender and a columnist for the Tehachapi News. From 1982-94, he held administrative posts with the U.S. Departments of Transportation, Treasury and Labor, and was a speech writer and administrator with the consulting firm of his brother, Michael K. Deaver, former chief of staff to President Ronald Reagan.

The Bipartisan Commission was created last year by Assembly Bill 2720, by Keith Olberg (R-Victorville). Three of its 13 members are appointed by the Governor, two each by the Senate Rules Committee, the Assembly Speaker, the Secretary of State, the FPPC Chairman and one each by the minority floor leaders of the Senate and the Assembly. Members of the commission receive no salary, but are reimbursed for attending meetings.

FPPC Staff Notes...

Veteran FPPC Attorney Luisa Menchaca Promoted To General Counsel Post

Luisa Menchaca, who joined the Fair Political Practices Commission as a staff attorney 11 years ago, was recently named the agency's General Counsel – the FPPC's top post in its Legal Division.

Menchaca, who has been assistant general counsel for three years, has served as an attorney in the Commission's Legal Division since 1990. During her tenure with the FPPC, she has served as legislative coordinator and as counsel to the five-member Commission. She has played a major role in the development of Commission regulations to implement the Political Reform Act of 1974, which established the FPPC.

"We are pleased by this opportunity to formally recognize Luisa's valuable role in this agency," said Commission Chairman Karen Getman. "She is a talented lawyer and a trusted advisor to the Commission. Her work at the FPPC has earned her respect both within and outside the agency. I admire her tremendous knowledge of the Political Reform Act and FPPC history and, most important, her personal integrity and common sense."

Most recently, Menchaca



was responsible for completion of the Commission's comprehensive two-year revision of the complex conflict-of-interest regulations. She has previously worked on implementation of various amendments to the Political Reform Act (PRA) resulting from initiatives, including the 1990 ethics reform measure, Proposition 112, and Proposition 208, the campaign reform measure tied up in the courts since its passage in 1996 and now largely invalidated by Proposition 34, passed last November.

Since being named General Counsel in February, she has played a major role in the implementation of Proposition 34. Her other duties have included oversight of the Commission's litigation and regulatory work as well as ongoing efforts to provide advice to members of

the public, candidates and public officials who have questions about the PRA.

Prior to joining the FPPC, Menchaca was a consultant to the California Assembly Elections and Reapportionment Committee and worked for the Senate Office of Research. She received a Bachelor's degree in political science from Loyola Marymount University and a law degree from the University of California, Davis, where as a young mother and law student in 1982-83, she helped establish the Infant Care Cooperative, a child care program operated by and for UCD law students.

"It was out of sheer necessity," she said of the cooperative. "My second son was born the weekend before I started my second year of law school."

The Legal Division is one of four divisions in the 80-employee FPPC, headquartered in Sacramento. The 14-member division includes 10 attorneys, who serve as legal counsel to the Commission, prepare written advice to public officials and assist the Commission in drafting regulations.

Understanding California's Conflict-Of-Interest Rules

The "Public Generally" Exception Examined

By John W. Wallace
Senior Commission Counsel

In October 1998 the Commission finished two-and-one-half years of work improving the conflict-of-interest regulations that interpret the Political Reform Act. The first phase involved the restructuring of the regulations into a more "user-friendly" format without making substantive changes. The Commission established a step-by-step procedure for systematically addressing conflict-of-interest problems. The procedure uses a standard analysis to identify the critical concepts and organize them into a logical sequence.

(Note: Phase 2 of the project was initiated in October 1999 and completed in December 2000 and consisted of substantive amendments to the conflict-of-interest regulations affecting all aspects of the standard analysis).

The eight steps of the procedure appear below.

- (1) Is the person a public official?**
- (2) Is the official making, participating in making, or influencing a governmental decision?**
- (3) Identify the official's economic interests.**
- (4) Determine whether the official's economic interests are directly or indirectly involved in the governmental decision.**
- (5) Select the appropriate materiality standard.**
- (6) Is it reasonably foreseeable that the**

materiality standard will be met as a result of the governmental decision?

- (7) Will the effect of the decision on the official's interest be distinguishable from the effect on the public generally?**

- (8) Is the official legally required to participate?**

The first six steps establish whether a conflict of interest will result in the official's disqualification. The last two steps establish whether the two express exceptions to the conflict-of-interest rules will apply to the decision in question. Step 7, the "public generally" exception, is the topic of this article.

The "public generally" exception

Where the "public generally" exception applies, the public official may participate in a decision despite the fact that the decision will have a foreseeable and material financial effect on the official's own interests. The exception applies no matter how material the financial effect might be. The rationale for the "public generally" exception is that the potential bias an official may feel as a result of his or her financial interest in the decision is less relevant where substantially the same benefit will flow to all, or almost all, of the official's constituents. Under those circumstances, despite voting in a biased manner, the official is merely fulfilling his duties to represent his constituents.

The "public generally" exception is narrowly applied. To determine if the exception applies, the official must determine if the economic interest of the official is affected by the governmental decision in substantially the same manner as a

(Continued on page 7)

Understanding California's Conflict-of-Interest Rules **“Public Generally” Narrowly Applied**

(Continued from page 6)

significant segment of the public. There are four steps to making this determination:

- (1) Identify each specific person or real property that is an economic interest of the official that will be materially affected by the governmental decision.
- (2) Select the appropriate significant segment rule from Regulation 18707.1(b). Which rule applies will depend on whether the official's interest is an individual, a piece of property, a business, a governmental entity, or none of the above. The rules appear below.
- (3) Ask this question: “Is the significant segment affected by the governmental decision?”
- (4) If the answer to (3) is “yes,” determine whether the effect on the significant segment is substantially the same as the effect on the person or property identified in (1).

If the answer to (4) is “yes,” the exception applies and the official may participate in the decision despite the conflict of interest.

Significant segments

Regulation 18707.1(b) now provides the various definitions of significant segments *which must be similarly affected* by the decision in order for the exception to apply. (Note: In July 2000, the Commission approved the separation of then-existing Regulation 18707 into two regulations. Former Regulation 18707(a) became Regulation 18707 with new language setting forth a “road map” for the application of the “public generally” exception. The general rule (described in former subdivision (b) of Regulation 18707) became Regulation 18707.1(b)).

- **Individuals.** For decisions that affect the personal expenses, income, assets, or liabilities of

a public official or a member of his or her immediate family, or that affect an individual who is a source of income or a source of gifts to a public official, the decision also affects: (a) 10 percent or more of the population in the jurisdiction of the official's agency or the district the official represents; or (b) 5,000 individuals who are residents of the jurisdiction. (Regulation 18707.1(b)(1)(A).)

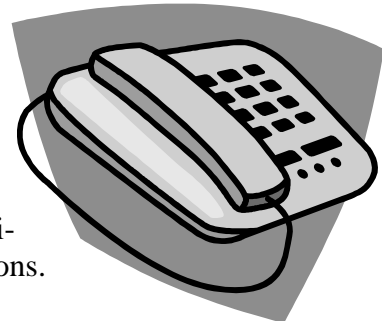
- **Real Property.** For decisions that affect a public official's real property interest, the decision also affects: (a) 10 percent or more of all property owners or all homeowners in the jurisdiction of the official's agency or the district the official represents; or (b) 5,000 property owners or homeowners in the jurisdiction of the official's agency. (Regulation 18707.1(b)(1)(B).)

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Toll-free Advice Line: 1-866-ASK-FPPC

Public officials, local government filing officers, candidates and others with obligations under the Political Reform Act are encouraged to call toll-free for advice on issues including campaign contributions and expenditures, lobbying and conflicts of interest. *FPPC staff members answer thousands of calls for telephone advice each month.*

The FPPC provides written advice in response to more complicated questions.



Understanding California's Conflict-of-Interest Rules

"Public Generally" Exception Examined

(Continued from page 7)

- **Business Entities.** For decisions that affect a business entity in which a public official has an economic interest the decision also affects 2,000 or 25 percent of all business entities in the jurisdiction or the district the official represents, so long as the effect is on persons constituting more than a single industry, trade, or profession. For purposes of this subdivision, a not-for-profit entity other than a governmental entity is treated as a business entity. (Regulation 18707.1(b)(1)(C).)
- **Governmental Entities.** For decisions that affect a federal, state or local government entity in which the public official has an economic interest, the decision will affect all members of the public under the jurisdiction of that governmental entity. (Regulation 18707.1(b)(1)(D).)
- **Exceptional Circumstances.** The decision will affect a segment of the population which does not meet any of the other standards in Regulation 18707.1. However, due to exceptional circumstances regarding the decision, it is determined such segment constitutes a significant segment of the public generally. (Regulation 18707.1(b)(1)(E).)

If the decision will affect the appropriate significant segment of the public *in substantially the same manner* it will affect the official's interest, the official can participate in the decision. For example, if a decision financially affects an official's home in substantially the same manner as the decision affects 10 percent of all homeowners in the district the official represents, the official may participate despite the conflict of interest. Similarly, if the decision affects the official's

business in substantially the same manner as it affects 2,000 other business entities in the jurisdiction and those businesses are not all in a single industry, trade, or profession, the official may participate in the decision despite the conflict of interest.

Special regulations

Since the passage of the Political Reform Act in 1974, a variety of special regulations have been adopted to implement the "public generally" exception under a variety of different circumstances.

Regulation 18707.2: Special Rule for Rates, Assessments, and Similar Decisions: If 10 percent or more of the property owners will be affected, either by the same percentage or across the board, the "public generally" exception applies if the decision meets the other requirements of this regulation.

Regulation 18707.3: Public Generally - Small Jurisdictions; Principal Residence: For agencies that have jurisdiction over a population of 25,000 or fewer, the "public generally" exception would apply if the official's principal place of residence is beyond 500 feet from the boundaries of the property which is the subject of the decision.

Regulation 18707.4: Public Generally: Appointed Members of Boards and Commissions: The "public generally" exception applies under some circumstances to the decisions of a board or commission if the statute, ordinance, or other provision of law which creates or authorizes the creation of the board or commission contains (explicitly or implied) a finding and declaration that the persons appointed to the board or commis-

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Understanding California's Conflict-of-Interest Rules

“Public Generally” Exception Examined

(Continued from page 8)

sion are appointed to represent and further the interests of the specific economic interest.

Regulation 18707.5: Sources of Income to Owners of Retail Business Entities: Section 87103.5 provides a separate exception to the conflict-of-interest laws for income from retail sales of goods or services, which affect many businesses. Under Regulation 18707.5 (which implements this exception), where retail customers of the business constitute a significant segment of the public generally, and the amount of income received by the business from one customer is not distinguishable from the amount of income received from the business's other retail customers, income from the customer may be disregarded for the conflict-of-interest purposes of the Act.

Regulation 18707.6: States of Emergency: The financial effect of a governmental decision on an official is indistinguishable from its financial effect on the public generally if the decision will affect an economic interest of the official (other than sources of gifts) in substantially the same manner as other persons subject to a state of emergency proclaimed by the governor, or proclaimed by the governing body of a city or county, and the decision is required to mitigate against the effects directly arising out of the emergency.

Regulation 18707.7: Public Generally - Industries, Trades, or Professions: For an elected state officer, a single industry, trade or profession constitutes a significant segment. For all other officials, an industry, trade, or profession that constitutes 50 percent or more of the entities in the jurisdiction constitutes a “predominant” industry.

Regulation 18707.9: Public Generally -

Residential Properties: Newly adopted Regulation 18707.9 provides two exceptions for certain landlord/tenant decisions. The first exception applies where a decision affects 5,000 or 10 percent of the property owners or homeowners, so long as the public official owns three or fewer residential property units.

The second exception applies to rent control decisions and requires all of the following to apply:

- (a) the decision is to establish, eliminate, amend, or otherwise affect the rights or liabilities of tenants and owners of residential property pursuant to a resolution, rule, ordinance, or other law of general application;
- (b) no economic interest of the official other than one created by ownership of residential real property, or the rental of that property is affected;
- (c) the official's economic interests are not directly involved in the decision;
- (d) the decision affects at least 10 percent of the residential property units in the jurisdiction of the official or district he or she represents; and
- (e) the decision will affect the official's economic interests in substantially the same manner as it will affect other residential property owners or owners of residential rental property affected by the decision.

It is beyond the scope of this article to fully discuss these specialized exceptions. You can see the actual language of the regulations on the Commission's web site, <http://www.fppc.ca.gov>.

www.fppc.ca.gov

Legislative Update

The Legislature's deadline for the passage of fiscal bills from policy committees is May 11, 2001. May 25 is the last day for policy committees to meet prior to June 11. The state constitution requires the budget to be passed by the Legislature by midnight, June 15.

Bills Amending the Political Reform Act

AB 2 (Alquist) - This bill was amended on 4/18/01 to require online reporting of the name, address, occupation and employer of any person making a payment or promise of payment of \$1,000 or more for a non-express advocacy communication made between 8 and 90 days prior to an election. The bill would also ban independent expenditures, apparently intended to include non-express advocacy, within 8 days of an election. The bill creates a criminal penalty of up to \$30,000 and a civil penalty of up to \$15,000 per count for violations of the new provisions it would enact.

AB 374 (Matthews) - This bill requires that a slate mailer that purports to represent the position of a peace officer or firefighter organization include the number of members the organization has statewide and in the county in which the mailer is sent.

AB 690 (Wesson) - This bill was



recently amended to address a controversy arising out of the April 2001 L.A. city election. The bill provides that a candidate, committee or other organization may not expend campaign funds to pay for 1,000 or more similar telephone calls to support or oppose a candidate or ballot measure unless the name of the organization that authorized or paid for the call is disclosed during the course of each call. Phone calls made by a candidate, campaign manager or volunteer are excluded. This bill currently amends the Elections Code, but Legislative Counsel has included language which says the bill furthers the purposes of the Political Reform Act and requires a two-thirds vote. According to the author's office, the bill will be amended to make it an urgency measure.

AB 696 (Longville) - This bill requires the Secretary of State to provide free online forms and software for electronically filing the lobbyist and campaign reports required by the Act. The bill requires that online forms be available on or before April 15,

2002 for lobbyist report filers, and July 1, 2002 for campaign filers. It requires that free software be available by December 1, 2002. Finally, the bill extends by one year, to June 1, 2002, the deadline for a report on the implementation and development of online and electronic filing, and adds a new report due no later than January 31, 2003.

AB 1236 (Jackson) - This bill repeals Article 5 of Chapter 4 and enacts a new scheme regulating **state** ballot measure advertisements. (The current sections regulate all measures--state and local.) In addition, the bill amends the Elections Code to require an initiative petition to indicate on its face whether it is circulated by a paid signature gatherer or a volunteer, and to disclose the campaign's major contributors. The bill requires the ballot pamphlet to identify initiatives that were qualified by volunteers.

AB 1325 (Negrete) - This bill nullifies an exception in Regulation 18239 which provides that certain communications before the PUC are not "direct communications" as that term is used in the definition of lobbyist. The bill also includes payments to influence certain PUC actions in the definition of payments to influence legislative or administrative action.

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Legislative Report

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SB 3 (Brulte) - This bill was recently amended to address a controversy arising out of the April 2001 L.A. city election. The bill provides that a candidate, committee or other organization may not expend campaign funds to pay for a telephone call to support or oppose a candidate or ballot measure unless the call announces that it was paid for or furnished by the candidate, committee or other organization. Phone calls made by a candidate, campaign manager or volunteer are excluded. This bill currently amends the Elections Code, but Legislative Counsel has included language which says the bill furthers the purposes of the Political Reform Act and requires a two-thirds vote. The bill is an urgency statute.

SB 34 (Burton) - This bill makes several clean-up changes suggested by the Commission. In addition, it requires online reporting within 48 hours of a contribution of \$5,000 or more made to support or oppose a state ballot measure or elective state office candidate, and allows unlimited fundraising to retire pre-2001 campaign debt, up to the amount of the debt.

SB 300 (McPherson) - This bill provides that an elected officer who does not maintain a political committee shall not be required

to file a semiannual statement for any period in which he or she has not received any campaign contributions or made any campaign expenditures. This was one of several recommendations by the Bipartisan ("McPherson") Commission on the Political Reform Act of 1974.

SB 386 (Johnson) - This bill requires the Secretary of State, in rejecting a campaign disclosure, to notify the filer by electronic mail of the reason(s) for rejection using plain, straightforward language and avoiding technical terms, so that the meaning will be easily understood.

SB 720 (Margett) - This bill previously amended the Welfare and Institutions Code to create an exception from the conflict-of-interest provisions of the Act for governing board and advisory panel members of the Local Initiative Health Authority for Los Angeles County (a.k.a. "L.A. Care Health Plan"). The bill was amended on 4/19/01 to remove this exception.

Other Bills

AB 931 (Frommer) - This bill limits to \$1,000 per source the aggregate amount of travel payments that the Insurance Commissioner may receive from an entity regulated by the Commissioner or a representative of a regulated entity. The bill was

amended on 4/16/01 to place its provisions in the Insurance Code rather than the Political Reform Act.

SB 798 (Speier) - This bill prohibits those regulated by the Insurance Commissioner and their representatives from making a contribution or gift to the Insurance Commissioner or a candidate for Insurance Commissioner. It excludes employees of regulated entities who make gifts or contributions from their personal funds. The bill also prohibits any attorney or law firm under contract or bidding on or under consideration for a contract to represent the Department of Insurance or the Insurance Commissioner from making any contribution or gift. This bill amends the Insurance Code, not the Political Reform Act.

Commission Meeting Summaries

March

(Continued from page 1)

and prosecute these cases in a timely and effective way, most before the November general election," Commission Chairman Karen Getman said after the meeting. "In addition, each person who violated the law during the March 2000 primary received a written notice prior to the November general election reminding them of the need to file late contribution reports."

"We believe this proactive effort will help achieve a greater degree of compliance with the Political Reform Act," she added.

The streamlined process and standardized fine schedule were designed to identify -- and swiftly prosecute -- violations of the late-contribution reporting provisions of the Political Reform Act. The program helps to ensure compliance by persons and committees required to file reports during the 16-day late contribution-reporting period immediately preceding an election.

The program is coordinated in the FPPC's Enforcement Division by Chief Investigator Al Herndon and Investigator Jon Wroten.

Wroten also stressed to the Commission that a key element of the program is a proactive outreach and education component. People who were

identified as potential violators during the March election cycle were contacted by staff, alerted to the 16-day reporting period during the November election, and forewarned about their filing requirements.

The program is one of several new streamlined enforcement and education initiatives underway at the FPPC. Other programs target compliance with major donor and Statement of Economic Interests rules.

Herndon and Wroten said an additional feature of the late-contribution program is a reduction of paperwork through use of a one-page stipulation decision and order form. They said the use of the form has helped speed prosecutions and resulted in more efficient use of staff time and resources.

To obtain late contribution information, FPPC staff utilized the Secretary of State's electronic database to identify reported contributions and cross-match those figures to find cases in which either the recipient or contributor had not filed a report. Upon determination that a violation occurred, enforcement actions were initiated.

Wroten reported that no fewer than 5,411 late contribution records were searched and reviewed in the electronic database.

Chairman Getman extended her appreciation on behalf of the Commission for the cooperation and assistance from

the Secretary of State's office.

Among other actions at the March meeting, Commission staff proposed Regulation 18503 for permanent adoption, along with a request to repeal Regulations 18502 and 18502.1, which deal with similar matters under previous laws. Staff stated that the proposed regulation would require small contributor committees to register, allow pre-Proposition 34 activities to count toward qualifying as a small contributor committee, impose a rolling 36-month time frame on two of the requirements, and allow committees that have received more than \$200 per person per calendar year in the past to cleanse their campaign funds of those excessive contributions in order to qualify as a small contributor committee.

The Commission unanimously agreed to adopt Regulation 18503 and repeal Regulations 18502 and 18502.1.

Enforcement Actions

Concealing True Source of Campaign Contributions

In 1996, **Donald K. BrOwn**, a lobbyist, laundered 14 campaign contributions to two candidates for Chula Vista City Council and one candidate for state Senate. BrOwn also failed to disclose two contributions made to state candidates on his Lobbyist Form. The Commission fined

Commission Meeting Summaries

him \$32,000.

Failure to Timely File Major Donor Campaign Statement – Streamlined

The following persons and entities have entered into stipulations for failure to file a major donor campaign statement due during the calendar year 2000.

1st Tier Violation - \$400 fine

American Fidelity Life Insurance made contributions totaling \$20,000.

Britz Fertilizers made contributions totaling \$10,000.

Camp, Dresser & McKee, Inc. made contributions totaling \$20,000.

Cement Masons Local 400 made contributions totaling \$13,517.

Omar Habbas made contributions totaling \$10,000.

Edwin Heafey made contributions totaling \$25,000.

Darrell Issa made contributions totaling \$17,750.

Kirkpatrick & Boswell made contributions totaling \$13,500.

Larry Knapp made contributions totaling \$100,000.

Richard McCune made contributions totaling \$10,000.

Packard, Packard & Johnson made contributions totaling \$50,000.

San Francisco AIDS Foundation made contributions totaling \$55,500.

The Great Western Life Assurance Co. made contributions totaling \$15,250.

The San Juan Company made contributions totaling \$25,000.

Vidler Water Company, Inc. made contributions totaling \$10,000.

Global Crossing made contributions totaling \$100,000.

Dairy Producers Environmental Foundation made contributions totaling \$60,000.

Rossini Farming Company, Inc. made contributions totaling \$10,000.

2nd Tier Violation - \$600 fine

Ramona Alves made contributions totaling \$25,000.

Black & Veatch made contributions totaling \$25,000.

Joseph Carcione made contributions totaling \$27,100.

Michael Douglas made contributions totaling \$12,500.

Candice Hanson made contributions totaling \$10,000.

David Hoffman made contributions totaling \$15,500.

Rouda, Feder & Tietjen and **Ronald Rouda** made contributions totaling \$40,250.

Starrh & Starrh Cotton Growers made contributions totaling \$10,000.00.

Steinbrecher & Associates made contributions totaling \$10,000.

The Stephanie & Carter McClelland Foundation made contributions totaling \$10,000.

The Chronicle Publishing Company made contributions totaling \$12,500.

P M Consulting Company made contributions totaling \$10,000.

Failure to Timely File Statements of Economic Interests - Expedited Procedure

The Commission fined **Bob Chapman**, a Planning Commissioner for the City of Laguna Beach, \$300 for failing to timely file his 1999 annual Statement of Economic Interests.

Commission Meeting Summaries

Jennifer Jacobs, an Assembly employee failed to timely file her 1999 annual Statement of Economic Interests. The Commission fined her \$400.

The Commission fined **Andy Matsui**, a Commissioner for the California Cut Flower Commission, \$200 for failing to timely file his assuming office Statement of Economic Interests.

The Commission fined **Walter Van Wingerden**, a Commissioner for the California Cut Flower Commission, \$200 for failing to timely file his 1999 annual Statement of Economic Interests.

The Commission fined **Cees Dobbe**, a Commissioner for the California Cut Flower Commission, \$200 for failing to timely file his 1999 annual Statement of Economic Interests.

Wilja Happe-Brand, an Alternate Commissioner for the California Cut Flower Commission, failed to timely file her 1999 annual Statement of Economic Interests. The Commission fined her \$200.

Statement of Economic Interests – Default

Brenda Whitfield, a Commissioner for the Los Angeles County Housing Commission, failed to timely file her assuming

office Statement of Economic Interests. The Commission fined her \$2,000.

Reporting Violations

During the calendar year of 1998, **Thomas Kranz** contributed \$15,000 and failed to file a major donor campaign statement. The Commission fined him \$400.

The Commission fined **Consumer Attorneys Issues Political Action Committee** and **Josephine De Shiell** \$1,750 for failing to timely and properly report a \$300,000 non-monetary loan from another committee.

The Commission fined **Yolo County Republican Central Committee** and **William Himmelmann**, treasurer \$7,000 for failing to timely file two semi-annual campaign statements and failing to disclose contributor and payee information.

Failure to Maintain Records/Reporting Violations

Engineering and Utility Contractors Association, PAC and **Michael Rocco**, treasurer, failed to maintain adequate records and failed to timely report contributions. The Commission fined them \$8,000.

April

As part of its continuing effort to streamline implementation of the Political Reform Act (PRA) of 1974, legal staff of the Fair Political Practices Commission (FPPC) introduced a list of amended regulations to be considered for adoption during the June 2001 meeting. During the April 6 Commission meeting, Legal Analyst Kelly Winsor presented legislation to the Commission, which proposed minor changes to four regulations and the repeal of a fifth.

The proposed amendment to **regulation 18406** would delete the word “telegram” from the notification requirements for candidates who file the short form campaign statement but subsequently raise or spend \$1,000 or more during the calendar year.

Regulation 18427.1 would be amended to reflect changes to the maximum monetary fines that the Commission may levy per individual violation of the Political Reform Act. The increase in monetary fines from \$2,000 per violation to \$5,000 per violation is the result of Proposition 34. The change in dollar amounts is the only action proposed for this regulation.

The Political Reform Act requires elected state officers to

Commission Meeting Summaries

file annual statements of economic interest (SEI) and **regulation 18723** specifies when those officials must file. The amended version of regulation 18723 would specify the SEI filing deadline of March 1 for elected members of the Board of Administration of the Public Employees' Retirement System. Currently the regulation does not specify when these officials should file.

Regulation 18960 defines when an expenditure of campaign funds would result in a direct personal benefit. The amendment of this regulation would increase the \$100 threshold to \$200. This change is in response to the legislative increase brought about by AB 974, which took effect January 1, 2001.

Staff recommended the repeal of **regulation 18416** due to prior amendments to the PRA. Regulation 18416 was adopted to implement additional reporting requirements contained in § 84216(e) and § 84216.5(d). However, the enactment of SB 2076 eliminated § 84216(e) and § 84216.5(d). Due to the deletion of these two sections of the PRA, regulation 18416 is no longer necessary.

Enforcement Actions

Concealing True Source of Campaign Contributions

A San Francisco businessman, **Ricardo Ramirez**, was fined \$6,000 for making four \$500 campaign contributions to San Francisco mayoral candidate Willie Brown in the names of other persons.

Failure To Timely File Lobbyist Employer Report and Failure To Maintain Records

Traditional Values Coalition of Anaheim, failed to timely file a Report of Lobbyist Employer and failed to maintain records for the same reporting period. **Louis Sheldon** failed to complete a Lobbyist Report for the same reporting period. Their failure to timely file reports and maintain records resulted in a \$1,000 fine.

Campaign Contribution Limitation and Reporting Violation

While he was a candidate in a special primary election for the State Senate, Ninth District, **Don R. Perata** of Alameda, received a \$90,000 campaign loan from his father. Don Perata and the committee **Don Perata 98** were fined \$4,000 for failure to properly itemize the source of this loan and for exceeding the special election contribution

limit by \$89,000.

Campaign Reporting Violations

A \$14,000 fine was levied against the San Francisco based **California League of Conservation Voters**, and the committee's treasurer, **Fredric Woocher**. A Franchise Tax Board audit found that they failed to timely file late contribution reports, failed to file independent expenditure reports, and failed to disclose and itemize contributions of \$100 or more in a timely manner.

Richard L. Dickerson of Redding, the committee **Dickerson for Assembly**, and treasurer **Mary J. Meisner** failed to report subvendor information for one vendor over the course of five reporting periods and were fined \$6,000.

Michela A. D. Alioto of Novato, the committee **Michela Alioto for California Secretary of State**, and treasurer **Linda T. Blum** failed to report subvendor information for expenditures made by the committee during 1998, resulting in a \$2,000 fine.

Dennis Sammut of San Bruno, and **Artichoke Joe's** were fined \$1,000, for failure to timely disclose eight contributions on their major donor report.

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Mirage Resorts of Las Vegas, Nevada, failed to timely disclose seven contributions on its major donor report and was fined \$1,000.

Carl Washington of Paramount, the committee **Carl Washington for Assembly**, and treasurer **Pam Goodwin**, were fined \$1,000, for failure to timely disclose one contribution on the Committee's semi-annual campaign statement.

Oaks Card Club of Emeryville failed to timely disclose two contributions on its major donor report and was fined \$1,000.

Bay Meadows Operating Company of San Mateo was fined \$2,000 for failure to timely file a major donor report.

Lucky Chances Inc. of Colma, was fined \$3,500 for failure to timely file two major donor reports and failure to file a late contribution report.

Dario Frommer of Los Angeles, the committee **Dario Frommer for Assembly**, and treasurer **Stephen Kaufman** failed to file a late contribution report and were fined \$2,000.

Marvin Kay of Los Angeles, was fined \$2,500 for failure to timely file a major donor statement and failure to file a late contribution report.

Failure to Timely File Late Contribution Reports - Expedited Procedure

Janice C. Leja from Beaumont, the committee **Leja for Assembly**, and treasurer **Doug Leja** were fined \$2,000 for failure to timely file a late contribution report.

Failure to Timely File Statements of Economic Interests - Expedited Procedure

Juan Sanchez, a planning commissioner for the County of Monterey, was fined \$600 for failure to timely file his assuming office Statement of Economic Interests and failure to timely file his 1999 annual Statement of Economic Interests.

Failure to Timely File Major Donor Campaign Statement - Streamlined Procedure

The following persons and entities have entered into stipulations for failure to file a major donor campaign statement due during the calendar year of 2000:

1st Tier Violation - \$400 fine

Arrowhead General Insurance Agency Inc. of San Diego, made contributions totaling \$10,000.

Lightspan, Inc. of San Diego, made contributions totaling \$84,500, which included state

and federal contributions, some made outside of California.

Palos Verdes Portuguese Bend, LLC / Barry Hon Affiliates of Laguna Hills, made contributions totaling \$10,000.

Rancho Vista Development Company of Palmdale, made contributions totaling \$16,550.

RBF Consulting of Irvine, made contributions totaling \$50,889.

San Jose Water Co. made contributions totaling \$14,250.

Dennis Weinberg of Camarillo, made contributions totaling \$53,900.

2nd Tier Violation - \$600 fine

Thomas Anderson of Indio, made contributions totaling \$22,810.

Cohen Medical Group of Long Beach, made contributions totaling \$60,500.

Raley's of Sacramento, made contributions totaling \$10,000.

Proposition 34: *Some Questions and Answers*

The Commission will be adopting regulations in the coming months to further clarify and implement provisions of Proposition 34, the ballot measure approved by voters last year.

Members of the public should use the FPPC's toll free advice line, 1-866-ASK-FPPC, to receive up-to-date information on Proposition 34. We are also planning to post on our web site a more complete list of questions and answers relating to Proposition 34.

This article features questions relating to small contributor committees and filing a statement of intent to accept or reject the expenditure limits.

Small Contributor Committees

Q. *How can an existing committee that has a history of making contributions and receiving contributions from more than 100 persons become a small contributor committee?*

A. An existing committee can become a small contributor committee by:

- Transferring all contributions over \$200 into a separate committee;
- It may count the length of time it existed before January 1, 2001 to meet the six month requirement; and

- The existing committee must amend its Statement of Organization, Form 410, to indicate its status as a small contributor committee.

Q. *Can a small contributor committee receive a contribution over \$200, and transfer the excess into a separate committee?*

A. No. A small contributor committee cannot receive a contribution over \$200. If a contribution in excess of \$200 is received from one source, the entire contribution should be placed into another committee, after which up to \$200 may be transferred to the small contributor committee.

State Legislative Candidates Acceptance/Rejection of Spending Limits

Q. *How does a candidate for the state Legislature indicate that he or she accepts the voluntary expenditure limits?*

A. The form 501 (Candidate Intention) has been revised to include this information. The new form is available on the Commission's web site (www.fppc.ca.gov).

Q. *Must a candidate accept or reject the voluntary expenditure limits for both the primary and*

general elections (or special and special runoff elections) at the same time?

A. Yes.

Q. *May a candidate who has accepted the expenditure limits for a particular election amend the form 501 at any time to reject the limits, or vice versa?*

A. No. There is no provision in the law for changing this status. However, a candidate who rejected the expenditure limits prior to the primary election may amend the form 501 within 14 days following the primary election to accept the limits for the general election as long as he or she did not exceed the expenditure limits during the primary.

Q. *Are there any circumstances under which the expenditure limits are lifted?*

A. Yes. If a candidate contributes personal funds to his or her campaign in excess of the limits for that election, then the expenditure limits are lifted for opposing candidates who accepted the limits.

Q. *What if the candidate accepts the limits and then exceeds them?*

A. Section 85403 states that a candidate who accepts the voluntary expenditure limits and then exceeds them is subject to penalties for violation of the Political Reform Act.

The Clerk's Corner

The SEI Filing Season is Over! Now What?

First, breathe. You managed to get through another Statement of Economic Interests filing season without any major catastrophes, we hope! We at the FPPC responded to some interesting phone calls from our regulated public and we're sure you had your share of calls as well.

We had one law enforcement official distribute Form 700's to a hundred or so officers in his command, thinking this would be a good anti-corruption public perception move. After discussing the facts it was determined *he* was the only one who had to disclose his personal financial interests.

On a more general note, we are hearing that some clerks have questions about their obligations with regard to late filers and non-filers. Are you *required* to fine someone who filed late? How many notifications to a non-filer are *enough* notifications?

Late Filer Issue

You, the filing officer, the person who receives and retains the originals of statements, have the discretion to issue a fine for a late filed statement. You also



have the discretion to waive any and all fines. The SEI fine process is a compliance tool. When you advise your filers at the time of your initial notification that they could be subject to a \$10-a-day fine, you will achieve better compliance.

Now that a statement is filed, is it late? Is there a good reason

that the filer was unable to meet the deadline? Have you adopted a policy setting out guidelines for you to follow to waive or impose a fine? The Commission adopted guidelines that it follows when waiving or assessing fines. For instance, it takes into consideration recent health problems which may have prevented the filer from completing the statement in a timely manner. Maybe there was a recent death in the family or unexpected travel made it difficult to file on time. Our guidelines also take into consideration the past filing history of the filer. You may utilize the Commission's guidelines or establish your own policy. Even if you have a history of waiving all fines, or have not had occasion to impose a late fine, it is a good idea to have a written policy to follow if and when an incident occurs. What if your history has been to waive

(Continued on page 20)

Use of Electronic Mail to Notify/Remind Filers of Reporting Obligations

The Commission recently issued an advice letter permitting an agency to use e-mail to notify and remind filers of their SEI filing obligations. You may use this practice in the future provided:

1. Your agency can ensure and verify that notification was received;
2. All e-mail notifications are archived; and
3. E-mail messages for filers who are delinquent or who fail to file are maintained for enforcement purposes. (*Anderson Advice Letter, No. A-01-039.*)

The Clerk's Corner

(Continued from page 19)

all fines, but now you are faced with a particular filer who filed late for frivolous reasons and you have decided to impose a penalty? Protect yourself. Develop a policy or adopt the Commission's guidelines as your policy and be consistent. Don't subject yourself to criticism. Contact the Commission to obtain a copy of its written guidelines.

You also need to remember that the maximum fine that can be assessed for a late filed Statement of Economic Interests is \$10 a day for each day late to a maximum of \$100. This fine mechanism is different than that assessed on late filed campaign statements.

Non-Filer Issue

What do you do when you are unsuccessful at securing a statement from an individual after several contacts have been made with the individual? As a filing officer, you must refer all non-filers to an enforcement authority.

You may refer non-filers to your elected city attorney, your county district attorney, or the Fair Political Practices Commission, but you *must* refer non-filers to an enforcement authority. You do not have discretion when it comes to a non-filer issue.



Referrals to the Commission's Enforcement Division are handled under the expedited compliance procedures adopted by the Commission. Filing officers can refer a non-filer to the Enforcement Division by completing a Non-filer Enforcement Referral form available from the FPPC. This form was also made available during the SEI filing officer workshops. The Enforce-

ment Division will accept referrals for all filers who have a filing obligation.

Following the guidelines established by the Enforcement Division, a filing officer should initiate an enforcement referral after sending at least two written notifications to the non-filer. After the written notifications, the filing officer should complete the non-filer referral form and attach the supporting documentation as requested in the referral form. The Enforcement Division will notify the filing officer of the receipt of the referral and will contact the non-filer to obtain compliance. The fine levied against a non-filer by the Commission is separate from the late filing fee that may still be collected by the filing officer. If you have any questions regarding referrals of non-filers, please contact Investigator Bonnie Swaim, Enforcement Division, toll free at 1-866-275-3772.

Our Outreach Team is Ready to Help!

To arrange for an onsite visit, contact our Technical Assistance Division at 1-866-275-3772. We can help establish a logging system, show you how to review statements, review non-filer/late filer guidelines and assist you where you need help.

2002 Primary/General Election Note:

Filing Schedules Will Soon Be Available On the FPPC's web site, www.fppc.ca.gov.

FPPC Advice Summaries

Formal written advice provided pursuant to Government Code section 83114 subdivision (b) does not constitute an opinion of the Commission issued pursuant to Government Code section 83114 subdivision (a) nor a declaration of policy by the Commission. Formal written advice is the application of the law to a particular set of facts provided by the requestor. While this advice may provide guidance to others, the immunity provided by Government Code section 83114 subdivision (b) is limited to the requestor and to the specific facts contained in the formal written advice. (Cal. Code Regs., tit. 2, §18329, subd. (b)(7).)

Informal assistance is also provided to persons whose duties under the act are in question. (Cal. Code Regs., tit. 2, §18329, subd. (c).) In general, informal assistance, rather than formal written advice is provided when the requestor has questions concerning his or her duties, but no specific government decision is pending. (See Cal. Code Regs., tit. 2, §18329, subd. (b)(8)(D).)

Formal advice is identified by the file number beginning with an "A," while informal assistance is identified by the letter "I."

Campaign

James A. Livingston, Ed.D.

Dated January 31, 2001

Our File Number: A-00-280

A school board member may not use his campaign funds to purchase a book where the payment for the purchase of the book will result in a substantial personal benefit to the board member. Moreover, the board member may not donate campaign funds to a public agency earmarked for the purchase of the book in order to avoid the personal use prohibition on using campaign funds for expenditures that have a substantial benefit on the board member.

Wes Steele

Registrar of Voters

Dated January 12, 2001

Our File Number: I-01-005

This letter combines preelection statements for candidates and committees involved in both a recall and regular election in Marin County.

Conflicts of Interest

Frank R. Perrot

Office of the State Architect

Dated January 5, 2001

Our File Number: I-00-141

Discusses the economic interests of the newly appointed State Architect who divested his interest in an architectural partnership with his spouse through a sepa-

rate property agreement.

Councilor Owen Newcomer

City of Whittier

Dated January 29, 2001

Our File Number: A-00-228

This letter discusses a city council member's potential conflict of interest concerning council decisions about a neighbor's construction of a fence on property on which the city has an easement. The letter discusses the guiding regulatory principles, including those changes recently adopted by the Commission which took effect February 1, 2001, as part of the Phase 2 conflicts revision project.

Philip Ho

San Ramon Valley Regional Planning Commission

Dated January 16, 2001

Our File Number: A-00-241

A member of a regional planning commission may participate in decisions concerning two residential developments located between 800-900 feet of his home unless he concludes it is reasonably foreseeable that the decisions will result in a material financial effect on his home. The letter discusses the materiality standards under both pre-and post-Phase 2 regulatory schemes.

FPPC Advice Summaries

John A. Ramirez

City of Signal Hill

Dated January 8, 2001

Our File Number: A-00-243

A council member who is also a realtor has a conflict of interest with respect to a large development in the City of Signal Hill because of the substantial effect on the housing market foreseeable from the development. Conversely, where the development is relatively small, financial effects on the official caused by the decision are less than substantially likely.

Honorable William M. Molinari

City of Montebello

Dated January 2, 2001

Our File Number: A-00-251

A city council member whose spouse was promised a cash settlement from an association in an amount exceeding \$1,000 may not participate in any decision that will have a reasonably foreseeable material financial effect on the association.

Joe Galligan, Councilmember

City of Burlingame

Dated January 2, 2001

Our File Number: A-00-252

A city council member with an ownership interest in stock options in a bank valued at \$2,000 or more has an investment interest in the bank. Thus, the official may not participate in any decisions that will have a foreseeable and material financial effect on the bank or on any of its subsidi-

aries or otherwise related business entities.

Everd A. McCain

Lassen County

Dated January 17, 2001

Our File Number: I-00-257

A public official who works under contract with a federal government agency has a conflict of interest in decisions of the Local Reuse Authority relating to reuse of lands declared surplus by the federal agency if such decisions have any reasonably foreseeable financial effect on the federal agency.

John A. Ramirez

City of Perris

Dated January 22, 2001

Our File Number: A-00-259

The city council must decide whether to renew a contract with a company that abates weeds for the city. It is not reasonably foreseeable that the decision will have a \$10,000 effect on the value of vacant properties owned by one of the council members.

Dan Supriano

City of Dixon

Dated January 9, 2001

Our File Number: I-00-261

A general discussion of the potential conflicts of interest for a new council member who has a home inspection business.

Sue Horne, Supervisor

Nevada County

Dated January 19, 2001

Our File Number: A-00-268

A public official whose spouse owns a small contracting business which builds two or three homes per year may vote on an EIR for a subdivision, where it is not substantially likely that the new subdivision will have a material financial effect on the spouse's contracting business.

Susan Wallace, Executive Officer

Youthful Offender Parole Board

Dated January 23, 2001

Our File Number: I-00-277

Unpaid service on a non-profit children's organization by an executive officer of the Youthful Offender Parole Board does not present any financial conflict-of-interest issues.

Diego Santana

City of Coachella

Dated January 24, 2001

Our File Number: A-01-002

A payment received from an Indian tribe is considered "income" under section 82030 because there is no exception to the definition of income that applies to payments from Indian tribes.

FPPC Advice Summaries

Rebecca Billing
Benicia Unified School District
Dated February 1, 2001
Our File Number: A-00-203

A public official may not participate in a decision that directly involves her employer. However, the conflict-of-interest rules do not apply to her personal job decisions.

Thomas R. Larmore
Santa Monica Planning Commission
Dated February 16, 2001
Our File Number: A-00-275

Each public body, even within a single city, is generally treated as a separate public body. Therefore, the public official is not prohibited from discussing with city staff a governmental decision before a separate agency provided: 1) he is not making, participating in making or influencing a governmental decision before his own agency, and 2) he does not act or purport to act in an official capacity as a member of his own agency.

Paul J. Donald, M.D.
University of California, Davis
Dated February 7, 2001
Our File Number: A-00-276

A university professor and physician, who is also a designated employee of a state agency, may accept payments for speeches under certain circumstances. The honoraria prohibition does not apply to speeches and articles provided in connection with

the practice of a bona fide business, trade, or profession. However, both sources of income and gifts may be considered disqualifying economic interests for conflict-of-interest purposes, depending on the specific facts and circumstances of a decision.

Thomas N. Hallinan, City Atty.
City of Oakdale
Dated February 1, 2001
Our File Number: A-00-282

A public official may not vote on a Specific Plan application, which would foreseeably have a material financial effect on a source of income to the official.

Myrna Abramowicz
25th District Agricultural Assn.
Dated February 9, 2001
Our File Number: I-01-003

It is presumed that it is not reasonably foreseeable that real property located over 500 feet from property which is the subject of a decision will experience a material financial effect from the decision. However, the public official will have a conflict of interest if it is reasonably foreseeable that another of her economic interests will be materially affected.

Bradley W. Sullivan
City of Sutter Creek
Dated February 6, 2001
Our File Number: A-01-006

A public official may not participate in a decision that will have

a material financial effect on real property owned by a trust in which the official has an irrevocable interest as a beneficiary.

Eric E. Knight
Town of Yountville
Dated February 14, 2001
Our File Number: I-01-010

A public official who transfers an interest in property to a third-party will no longer have an economic interest in that property. However, the official may still have a potential disqualifying interest in the third party, as a source of income, for the twelve months preceding the decision.

Sue Palmer, Councilmember
City of Banning
Dated February 6, 2001
Our File Number: I-01-015

A public official does not have an economic interest in income or employment-related benefits when the employer is a local governmental agency, because these interests are covered by the local government exception. Therefore, an official can make, participate in making, or influence governmental decisions relating to a proposed amendment to a Public Employees Retirement System ("PERS") contract.

FPPC Advice Summaries

Prasanna W. Rasiah

City of Berkeley

Dated February 27, 2001

Our File Number: A-01-020

Simply severing affiliation with the city would not sufficiently change the character of a local government agency so as to make it not subject to the conflict-of-interest provisions of the Act. It is only necessary that enough of the *Siegel* factors in this case are satisfied so that the overall character of the entity corresponds to that of a local government agency.

Grace Vallejo

City of Delano

Dated February 9, 2001

Our File Number: A-01-021

Due to the government salary exception, a public official does not have a conflict of interest in a decision involving his or her employer, if the employer is a government agency.

Assemblyman John Campbell

Seventieth District

Dated February 15, 2001

Our File Number: I-01-024

An assembly member may testify before the Air Resources Board (ARB) and interact with ARB staff in his official capacity, so long as the decisions of the ARB will not affect his business interest in a manner different from the effect on other automobile dealers.

Ken S. Lundie

San Mateo County Board of Harbor Commissioners

Dated February 20, 2001

Our File Number: A-01-037

A harbor commissioner does not have a conflict of interest in a decision to close a pier so long as he does not have an economic interest in the fishery that is the sole tenant of the pier, and so long as the decision will not materially affect the commissioner's fishing business.

Gifts

Alan R. Burns, City Attorney

City of Fountain Valley

Dated February 28, 2001

Our File Number: A-01-026

A ticket to a charitable organization's fundraiser given to a public official by a third party with business before a public official has no value and is not reportable as a gift. This exception applies only to nonprofits organized under IRS Code Section 501(c)(3). Regulation 18946.4 (b) is discussed.

Lobbying

Boyce Hinman

Lambda Letters Project

Dated January 12, 2001

Our File Number: A-00-281

An organization established primarily to encourage members to contact legislators and the Governor concerning legislative action must calculate all costs as-

sociated with this advocacy to determine if they meet the \$5,000 threshold for reporting requirements. Regulation 18616 (g)(3) does not exempt this type of organization from reporting.

Mass Mail

Thomas D. Jex, Esq.

City of Laguna Woods

Dated January 9, 2001

Our File Number: A-00-271

Nothing in the Act prohibits a city from paying all or part of the costs of printing, handling, translating or mailing candidate statements in voters' pamphlets. The payment would not be a contribution to the candidates.

Cruz M. Bustamante, Lieut. Gov.

Office of the Lieutenant Governor

Dated January 23, 2001

Our File Number: A-01-012

The mass mailing prohibition in section 89001 applies where more than 200 "substantially similar" items are sent in a calendar month. For purposes of this prohibition, each item within a specific category is substantially similar to those in the same category. However, each category may be treated as a separate mass mailing. For example, 200 copies of a letter congratulating an Eagle Scout may be sent, as well as 200 copies of a letter congratulating a restaurant

FPPC Advice Summaries

owner on having his restaurant named as one of the best in California, in the same calendar month.

Richard Rothman
Raoul Wallenberg Jewish Democratic Club
Dated February 28, 2001
Our File Number: A-00-260

A slate mailer organization may qualify as an independent expenditure committee by publishing its endorsements in a newspaper ad. When a slate mailer organization becomes an independent expenditure committee, the Act does not require the organization to file separately as a committee, as long as the organization reports the independent expenditures on its slate mailer organization campaign statement.

Props. 208/34

Jim Rissmiller, Treasurer
San Bernardino County Taxpayers PAC
Dated January 19, 2001
Our File Number: A-00-264

A Proposition 208 committee must amend its statement of organization to reflect that it is a small contributor committee under Proposition 34. The committee must amend its statement of organization before contributing at the higher contribution limit.

Revolving Door

James P. Nicholls
California Department of Forestry and Fire Protection
Dated February 27, 2001
Our File Number: A-01-019

A former supervisor from the California Department of Forestry & Fire Protection may not aid, assist or represent a private sector employer regarding a procurement for which a Request For Information was drafted under his supervision as a state official.

Statement of Economic Interests

Lori J. Barker
City of Chico
Dated February 8, 2001
Our File Number: I-00-265

This informal advice letter discusses the general principles regarding the Act's disclosure requirements of a public official's spouse's investments and business interests. An important aspect of the discussion is the impact of a separate property agreement between the public official and his spouse.

Nicholas B. Galiotto
City of Mountain View
Dated February 7, 2001
Our File Number: A-01-001

Neither the proceeds from a CALPERS pension nor diversified mutual funds held through a

deferred compensation plan are reportable on statements of economic interests.

Honorable Laura Mannes
San Diego Superior Court
Dated February 8, 2001
Our File Number: A-01-022

The assets of a parents' living trust for which an official is a beneficiary does not need to be reported by the official because the trustee retains unlimited powers to buy/sell or deplete the assets of the trust.

Political Reform Act Available on CD ROM

The Political Reform Act of 1974 (updated to January 1, 2001) is available on computer CD-ROM. The CD includes brief histories of amended sections and references to applicable regulations, opinions and enforcement decisions. The CD is available for \$10 per copy, although there is no charge for other government agencies. The CD includes Adobe PDF and Microsoft Word formats. Please send your check made payable to the "State of California" and the order form below to:

Fair Political Practices Commission
428 J Street, Suite 620
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You may also order the CD-ROM by faxing this form to (916) 322-0886 or by calling (916) 322-5660 and pressing "1" to leave a voicemail order. Be sure to clearly state your name and mailing address as well as the format(s) you want. You will be billed \$10 per copy.

**Fair Political Practices Commission
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